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Attorneys for Plaintiff
NEW CINGULAR WIRELESS PCS, LLC
d/b/a AT&T MOBILITY, a Delaware Limited
Liability Company

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

NEW CINGULAR WIRELESS PCS,
LLC d/b/a AT&T MOBILITY, a
Delaware Limited Liability Company,
Plaintiff,

vs.

WINDWARD PLANNING
COMMISSION, COUNTY OF
HAWAII; COUNTY OF HAWAII;
THOMAS RAFFIPIY, in his official
capacity as Chairman of the
Windward Planning Commission;

CIVIL NO. 1:20-00297-JAO-KJM

**STIPULATION STAYING
ACTION TO ALLOW FURTHER
CONSIDERATION BY THE
WINDWARD PLANNING
COMMISSION, COUNTY OF
HAWAII; [PROPOSED] ORDER**

[caption continued]

COUNTY OF HAWAI'I PLANNING
DEPARTMENT,

Defendants.

**STIPULATION STAYING ACTION TO ALLOW FURTHER
CONSIDERATION BY THE WINDWARD PLANNING COMMISSION,
COUNTY OF HAWAII**

WHEREAS, Plaintiff New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, a Delaware limited liability company ("**Plaintiff**"), applied to Defendant Windward Planning Commission, County of Hawai'i (the "**Commission**") for a use permit for the construction and operation of a 105-foot tall cellular antenna and related equipment, to be located in Kea'au, Puna, Hawai'i (the "**Application**");

WHEREAS, after staff processing, receipt of a recommendation from the Defendant County of Hawai'i Planning Department, and the conduct of public hearings (the most recent being June 4, 2020), the Commission denied the Application;

WHEREAS, Plaintiff thereafter filed the above-captioned action against the named Defendants for declaratory and injunctive relief based on, *inter alia*, alleged violations of state and federal law, including, *inter alia*, 47 U.S.C. §§ 253 and 332(c)(7)(B)(i)(II) (effective prohibition of telecommunications services) and 47 U.S.C. § 332(c)(7)(B)(iii) (absence of substantial evidence to support denial of wireless communications facility application); and

WHEREAS, to further enable the Commission's consideration of the

Application without requiring a new application, the parties agree that an order tolling all applicable statutory deadlines, including, but not limited to, all applicable statutes of limitations, and allowing the Commission the opportunity for further consideration, evaluation, deliberation, and action on the Application is the most appropriate procedural course of action.

NOW THEREFORE, Plaintiff and Defendants in this matter hereby stipulate, agree (without admitting liability or committing to a specific decision), and request that the Court ORDER as follows:

1. That the above-captioned action be stayed for further consideration, evaluation, deliberation and action by the Commission on the Application, pursuant to HRS § 91-14(e), which allows the Court to order that an applicant receive the opportunity for presentation of additional evidence before the Commission, upon such conditions as the Court deems proper;

2. That, pending the above-described process, all applicable statutory deadlines, including, but not limited to, all applicable statutes of limitations, shall be tolled from the date of the filing of this Stipulation and Order, until forty-five (45) days following action on the Application by the Commission, or the recommencement of this matter in this Court, whichever may occur first;

3. That the Commission shall conduct its further consideration, evaluation, deliberation and take action on the Application, within ninety (90)

days following the date of the filing of this Stipulation and Order, unless otherwise agreed upon by the parties;

4. That if, following further consideration, evaluation and deliberation by the Commission, the Application is not approved or has not been acted upon by decision within ninety (90) days following the date of the filing of this Stipulation and Order, the stay would be lifted and the litigation in this matter shall resume. There shall be no other recourse or consequence against Defendants or the Commission other than litigation resuming.

5. That if, following further consideration, evaluation and deliberation by the Commission, the Application is approved and the subject use permit is issued with conditions acceptable to Plaintiff, then this action shall be dismissed with prejudice within forty-five (45) days after issuance of any Amended Findings of Fact, Conclusions of Law, Decision and Order by the Commission, with each side to bear their own costs and attorney's fees arising from all proceedings related hereto; and

6. That if, following further consideration, evaluation and deliberation by the Commission, the Application remains denied, or the Application is approved and the subject use permit is issued with conditions that are unacceptable to Plaintiff, then this matter shall return to the above-captioned Court for further proceedings.

IT IS SO STIPULATED:

DATED: Honolulu, Hawai'i, September 1, 2020.

/s/ William M. Harstad

WILLIAM M. HARSTAD
KATHERINE A. GARSON
DEREK B. SIMON
RAYMOND P. BOLAÑOS (*Pro Hac
Vice*)

Attorneys for Plaintiff
NEW CINGULAR WIRELESS PCS,
LLC, d/b/a AT&T MOBILITY, a
Delaware Limited Liability Company

/s/ Dakota K. Frenz

JOSEPH K. KAMELAMELA
LAUREEN MARTIN
DAKOTA K. FRENZ

Attorneys for Defendants
WINDWARD PLANNING
COMMISSION, COUNTY OF
HAWAI'I, COUNTY OF HAWAI'I,
THOMAS RAFFIPIY, in his official
capacity as Chairman of the Windward
Planning Commission, and COUNTY
OF HAWAI'I PLANNING
DEPARTMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

NEW CINGULAR WIRELESS PCS,
LLC d/b/a AT&T MOBILITY, a
Delaware Limited Liability Company,

Plaintiff,

vs.

WINDWARD PLANNING
COMMISSION, COUNTY OF
HAWAI'I; COUNTY OF HAWAI'I;
THOMAS RAFFIPIY, in his official
capacity as Chairman of the
Windward Planning Commission;
COUNTY OF HAWAI'I PLANNING
DEPARTMENT,

Defendants.

CIVIL NO. 1:20-00297-JAO-KJM

ORDER GRANTING PARTIES'
REQUEST PURSUANT TO
STIPULATION TO STAY
ACTION TO ALLOW FURTHER
CONSIDERATION BY THE
WINDWARD PLANNING
COMMISSION, COUNTY OF
HAWAI'I

**ORDER GRANTING PARTIES' REQUEST PURSUANT TO
STIPULATION TO STAY ACTION TO ALLOW FURTHER
CONSIDERATION BY THE WINDWARD PLANNING COMMISSION,
COUNTY OF HAWAII**

Pursuant to the Stipulation by and between Plaintiff New Cingular Wireless PCS, LLC, *dba* AT&T Mobility, a Delaware limited liability company, and Defendants Windward Planning Commission, County of Hawai'i (the "**Commission**"), County of Hawai'i, Thomas Raffiipy, in his official capacity as Chairman of the Commission, and County of Hawai'i Planning Department (the "**Planning Department**"), by and through their respective counsel of record, and good cause appearing therefore,

IT IS HEREBY ORDERED that:

1. That the above-captioned action be stayed for further consideration, evaluation, deliberation and action by the Commission on the Application, pursuant to HRS § 91-14(e), which allows the Court to order that an applicant receive the opportunity for presentation of additional evidence before the Commission, upon such conditions as the Court deems proper;
2. That, pending the above-described process, all applicable statutory deadlines, including, but not limited to, all applicable statutes of limitations, shall be tolled from the date of the filing of this Stipulation and Order, until forty-five (45) days following action on the Application by the Commission, or the recommencement of this matter in this Court, whichever may occur first;
3. That the Commission shall conduct its further consideration, evaluation, deliberation and take action on the Application, within ninety (90) days following the date of the filing of this Stipulation and Order, unless otherwise agreed upon by the parties;
4. That if, following further consideration, evaluation and deliberation by the Commission, the Application is not approved or has not been acted upon by decision within ninety (90) days following the date of the filing of this Stipulation and Order, the stay would be lifted and the litigation in this matter shall resume. There shall be no other recourse or consequence against Defendants or the


Commission other than litigation resuming.

5. That if, following further consideration, evaluation and deliberation by the Commission, the Application is approved and the subject use permit is issued with conditions acceptable to Plaintiff, then this action shall be dismissed with prejudice within forty-five (45) days after issuance of any Amended Findings of Fact, Conclusions of Law, Decision and Order by the Commission, with each side to bear their own costs and attorney's fees arising from all proceedings related hereto; and

6. That if, following further consideration, evaluation and deliberation by the Commission, the Application remains denied, or the Application is approved and the subject use permit is issued with conditions that are unacceptable to Plaintiff, then this matter shall return to the above-captioned Court for further proceedings.

DATED: Honolulu, Hawai'i, September 8, 2020.




Kenneth J. Mansfield
United States Magistrate Judge